

## **Board Administration and Regulatory Coordination Unit**

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### **Division 3. Air Resources Board**

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### **Chapter 1. Air Resources Board**

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### **Subchapter 1.25. Administrative Procedures–Hearings**

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### **Article 3. Administrative Hearing Procedures for Petitions for Review of Complaints**

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### **Subarticle 8. Decisions of the Hearing Officer**

#### **§ 60065.40. Penalty Assessment Criteria.**

In determining penalties for complaints issued under Health and Safety Code section 43028, the hearing officer shall consider all relevant circumstances, including, but not limited to:

- (a) The extent of harm caused by the violation to public health and safety and to the environment;
- (b) The nature and persistence of the violation, including the magnitude of the excess emissions;
- (c) The compliance history of the respondent, including the frequency of past violations;
- (d) The preventive efforts taken by respondent, including the record of maintenance and any program to ensure compliance;
- (e) The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods;
- (f) The efforts to attain, or provide for, compliance;
- (g) The cooperation of the respondent during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation; and
- (h) For the person who owns a single retail service station, the size of the business.

NOTE: Authority cited: Sections 39600, 39601, 43028 and 43031(a), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); and Sections 43028, 43031(a) and 44011.6, Health and Safety Code.

#### **REFERENCE**